

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter
of
SIPC V. MADOFF, and Case Nos.
IRVING H. PICARD, 1-08-01789
1-09-01305
1-09-01273

Debtors.

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September 9, 2009

United States Custom House
One Bowling Green
New York, New York 10004

Pre-trial conference, et al.

B E F O R E:

HON. BURTON R. LIFLAND,
U.S. Bankruptcy Judge

1 We would like to hear what those are under the applicable
2 code.

3 However, in the context of the joint
4 account, Your Honor, there is something to be said. The
5 joint account is fact sensitive, Your Honor. Even the
6 Morgan Kennedy case, the case on this topic talks about the
7 fact that if customers had a relationship with BLMIS they
8 could call up Bernie Madoff or they could do things with
9 others who are within that organization. That may take
10 them out of the role of just being an indirect investor and
11 not being known to us but someone who does become known.

12 In that context, with everything, Your
13 Honor, we would then have to decide --

14 THE COURT: Isn't that a discrete issue in
15 your affirmance or denial of that particular claim?

16 MR. SHEEHAN: I don't think that it will
17 come out that way. The way we are going to do this is
18 that our customer claim form, as Your Honor has seen, as
19 part of your December 23rd order, does ask them to identify
20 a good deal of information and tells us how you got
21 involved with the account or with BLMIS.

22 What it doesn't ask and it couldn't because
23 it is too voluminous, whether or not you had phone calls,
24 e-mails, and unless the customer discloses that, then there
25 is no way for us to know that. The best way for us to do

1 that, I believe, is once we have done a further analysis of
2 the customer claim itself in each of the indirect investors
3 claim, then in these cases, the feeder funds are net
4 losers. We will in all of those cases allow them that
5 claim. The feeder fund will get a \$500,000 allowance, and
6 there is Optima, the fund where they paid us \$235 million
7 in preference claims. We allowed that and advanced
8 \$500,000. Their claim is in excess of half a billion
9 dollars. At the time of the distribution when we
10 distribute the customer fund property, we will distribute
11 the dollars based on their allowed claim.

12 What we don't know, Your Honor, and our
13 thought is -- I'm sorry I lost my train of thought there,
14 when we allow the claim like we did in Optima, those
15 indirect investors will be denied. The reason being
16 unless there is something in that file, as Your Honor
17 pointed out, Your Honor could be right, there could be
18 something in the file that shows there is heavy
19 correspondence going on between that customer and BLMIS.

20 But more likely than that, there won't be.
21 Because if there isn't any, and we may be proved wrong but
22 we don't believe it is true. We believe we could
23 essentially put before Your Honor literally thousands of
24 these joint account claims in the context of a scheduling
25 order that gives all of the participants the opportunity to